

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 964 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI HARIBHAI

Versus

JETPUR MUNICIPALITY

Appearance:

MR VIJAY H PATEL for Petitioners

MS MANISHA LAVKUMAR ASTT GOVT PLEADER for
Respondent authority

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/11/2000

ORAL JUDGEMENT

Heard Mr.Vijay H. Patel, learned advocate
appearing on behalf of the petitioner and Ms. Manisha
Lavkumar, learned AGP for the respondent authorities.

In the present petition, the grievance of the

present petitioner is that the petitioners carry on their business of different types in the land situated opposite to Taluka Panchayat, Rajkot Road, Jetpur since last 14 years. The respondent No.1 is collecting a token rent of Rs.2/- per day and such collection is made every day. The petitioners are being given receipt for the same. The petitioner No.1 is having a cabin of tea, pan and cigarette shop. The petitioner No.2 is having business of cycle repairing in the name and style of Bharat Cycle Store. The petitioner No.3 is having a laundry. The petitioner No.4 is having the business of scooter repairing in the name and style of Yogesh Auto Service. The petitioner No. 5 is having business of Auto Electric Works in the name and style of Shivshakti Auto Electric. The petitioner Nos. 6 & 7 are having the business of scooter repairing. It is also submitted that petitioner Nos. 1, 3, 4, 6 and 7 are having electricity connections from the Gujarat Electricity Board and they are paying electric bills regularly. The case of the petitioners is that some of the employees of the respondent No.2 namely Shri Dobaria, Engineer, Batukbhai Clerk and Mr.Palabhai driver had come to the petitioners on 8-2-1993 at 1.00P.M. in the noon and directed the petitioners to remove their cabins. The petitioner had asked for the reasons but none of them had given any reason for the proposed removal of their cabins. According to the petitioners, their cabins are required to be regularised by respondent No.2 Municipality. According to the petitioners, they are carrying on business since last more than 14 years and their livelihood is entirely depend from their respective business. According to the petitioners, the petitioners are entitled to regularisation of their cabins by the respondent authorities.

Ms.Manisha Lavkumar, learned AGP appearing on behalf of the respondent authorities submitted that the petitioners are unauthorised occupants of cabins on the land in question without any permission and they are not the owner of the land in question. Therefore, it is an unauthorised occupation of land in question by the petitioners which amounts encroachment of the land of the State Authority. Therefore, the petitioner shall have to remove their cabins from the land in question. However, learned AGP Ms. Manisha Lavkumar has submitted that prior to filing of the present petition, the petitioner have not approached the respondent authorities and therefore, without approaching the respondent authority, direct petition is not maintainable and therefore, request of learned AGP is to dismiss the present petition. The respondent No.1 has filed

affidavit-in-reply and pointed out that the respondent No.2 has no power or authority to remove these cabins placed on which these cabins are placed, is belonging to the Jetpur Municipality and therefore, Jetpur Municipality is entitled to remove these cabins. It is also pointed out by the respondent No.1 that the petitioners are trespassers and they are not entitled to place the cabin on the land belonging to Municipality. I have considered the aforesaid submissions of both the sides as well as considering the affidavit in reply filed on behalf of the respondent No.1, which is on page 20 of the petition, the respondent No.1 has referred to Resolution No.64 dated 24th July, 1991 wherein three conditions have been specifically mentioned and accordingly, first of all petitioners should remove these cabins and they should make application for the allotment of land to put their cabins and Jetpur Municipality will hold public auction and petitioners can participate in it and if they will be entitled to get the land, the same will be allotted to them as per the auction. The respondent No.1 has also filed additional affidavit in reply which is taken on record and wherein it is clarified that Jetpur Municipality has not issued any receipt to the petitioners but the receipt are issued for moving Lary in the city and not for fixed place for putting the cabins as have been put by the petitioners. It is also made it clear in the additional affidavit-in-reply that the petitioners having fixed Pakka cabins for which they are not permitted. Therefore, in view of this fact, in the interest of justice , it is directed to the petitioners to make representation to the respondents for regularising their cabins within period of one month from the date of receiving the certified copy of this order. As and when such representation is will be received by the respondents, the same shall have to be considered by the respondent authorities in light of resolution passed by the authority and in accordance with law and policy within period of three months from the date of such representation. However, it is further directed that the decision which may be taken by the respondent authority shall have to be communicated to the petitioners in writing and during the pendency of such representation, interim relief granted by this Court on 15th April, 1994 shall remain continue till the decision is taken by the respondents. In view of above observations and directions, present petition is disposed of accordingly. Directions accordingly. No order as to costs. Rule discharged.

Date : 17-11-2000 [H. K. Rathod, J.]

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